

# SENATE NO. 772

## **AN ACT** AUTHORIZING MUNICIPALITIES TO PROTECT LOW AND MODERATE INCOME TENANTS AND UNITS OF GOVERNMENTALLY INVOLVED HOUSING.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is forthwith to authorize municipalities to protect low and moderate income tenants and units of governmentally involved housing, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience. , therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled,  
And by the authority of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 40P the following  
2 chapter:

3 CHAPTER 40Q.

4 PROTECTION OF LOW AND MODERATE INCOME TENANTS AND UNITS  
5 OFGOVERNMENTALLY INVOLVED HOUSING.

6 Section 1. The general court finds and declares that: (a) a serious public emergency exists with  
7 respect to the housing of a substantial number of persons in certain areas of the commonwealth  
8 residing in governmentally involved housing, inasmuch as there is a threat that many low-income  
9 individuals and families residing in such housing, particularly those elderly and disabled, may be  
10 threatened with displacement as a result of prepayment of mortgage financing, loss of use or rent  
11 restrictions, expiring subsidy contracts, and expected increases in rent, and there is a threat that

12 affordable housing stock will be lost due to expiration of use or rent restrictions and such pre-payment,  
13 further exacerbating an extreme housing shortage for low-income families and individuals; (b) it is the  
14 commonwealth's policy to encourage owners of this governmentally involved housing to accept  
15 incentives to keep such housing affordable and avert displacement; (c) such emergency should be met  
16 by the commonwealth immediately and with due regard for the rights and responsibilities of its local  
17 communities; therefore, this chapter is declared to be in the public interest.

18           Section 2. The following words or phrases as used in this chapter shall have the following  
19 meanings:

20           (A) “governmentally-involved housing,” means any residential housing project constructed,  
21 rehabilitated, or assisted pursuant to any one or more of the following governmental programs:

22                 (1) section 202 of the Housing Act of 1959, 12 U.S.C. section 1701q;

23                 (2) section 221(d) of the National Housing Act, 12 U.S.C. section 1715l(d);

24                 (3) section 236 of the National Housing Act, 12 U.S.C. section 1715z-1;

25                 (4) any project-based programs for low-income persons under section 8 of the United States  
26 Housing Act of 1937, 42 U.S.C. section 1437f;

27                 (5) the Rent Supplement Program under section 101 of the Housing and Urban Development  
28 Act of 1965, 12 U.S.C. section 1701s;

29                 (6) the U.S. Department of Agriculture’s Rural Rental Housing Program under section 515 of  
30 the Housing Act of 1949, 42 U.S.C. section 1490a;

31                 (7) the Urban Development Action Grant, hereinafter referred to as UDAG, 42 U.S.C. section  
32 5318, or the Housing Development Action Grant, hereinafter referred to as HoDAG, 42 U.S.C. section

33 1437o, in either case to the extent the project's rents are restricted or regulated pursuant to a grant  
34 agreement with the U.S. Department of Housing and Urban Development or otherwise;

35 (8) the federal low-income housing tax credit program under section 42 of the U.S. Internal  
36 Revenue Code, 26 &.S.C. section 42;

37 (9) chapter 121A of the General Laws to the extent the chapter 121A approvals restrict the  
38 affordability of the project's dwelling units;

39 (10) section 13A of chapter 708 of the Acts of 1966, as amended;

40 (11) section 811 of the Cranston-Gonzalez National Affordable Housing Act, as amended (42  
41 U.S.C. section8013);

42 (12) section 207 of the National Housing Act, 12 U.S.C. section 1713, and subject to a rent  
43 regulatory agreement pursuant to chapter 121A of the General Laws;

44 (13) section 220 of the National Housing Act, 12 U.S.C. section 1715k(a) and (h), and subject  
45 to a rent regulatory agreement pursuant to chapter 121A of the General Laws; or

46 (14) the project-based Massachusetts Rental Voucher Program, so-called (see line item 7004-  
47 9004 of Section 2 of chapter 159 of the Acts of 2000, as well as 760 C.M.R. Part 49.00)

48 For purposes of this section, "governmentally involved housing" shall not include the  
49 following:(1) housing units owned or acquired by the municipality through tax foreclosure;(2) housing  
50 units in a one to ten family building or structure that is not part of a larger housing development,  
51 whether on one or more sites;(3) structures containing housing units subsidized with mobile tenant-  
52 based rental assistance that would not otherwise come within the definition of governmentally  
53 involved housing;(4) structures containing housing units which were subject to chapter 36 of the acts  
54 of 1976, chapter 797 of the acts of 1969, chapter 863 of the acts of 1970, chapter 843 of the acts of

55 1970, chapter 843 of the acts of 1971, chapter 45 of the acts of 1987, chapter 504 of the acts of 1987,  
56 or chapter 601 of the acts of 1981, but which would otherwise not come within the definition of  
57 governmentally involved housing; (5) public housing owned or operated by a local housing authority  
58 under chapter 121B, the United States Housing Act of 1937, or any successor act or public housing  
59 programs formerly assisted under the United States Housing Act of 1937; (6) housing units which first  
60 became governmentally involved after October 1, 1996, unless the municipality enacts a different date;  
61 and (7) housing units where the sole government involvement is the owner's participation in federal,  
62 state, or municipal funded programs for home repairs, energy conservation, or lead paint abatement.

63 (B) "Formerly governmentally involved housing", housing which was governmentally involved  
64 as of July 1, 1994, or which became governmentally involved housing after July 1, 1994, but which is  
65 no longer governmentally-involved as defined in this section.

66 (C) "Low-income", an annual income which is 80 per cent or less of the median income for  
67 the area as determined by the United States Department of Housing and Urban Development, with  
68 adjustments for smaller and larger families.

69 Section 3. (a) Notwithstanding the provisions of any general or special law to the contrary,  
70 including, without limitation, the provisions of chapter 282 of the acts of 1994, a municipality  
71 accepting the provisions of this chapter shall regulate the rent for use or occupancy of governmentally  
72 involved or formerly governmentally involved housing to the extent such regulation is not preempted  
73 by federal law or by section 6 of chapter 708 of the acts of 1966, once the basis for federal or  
74 Massachusetts Housing Finance Agency rent preemption no longer exists.(b) Said municipality shall  
75 establish as the maximum rent for governmentally involved and formerly governmentally involved  
76 housing units the rent in effect therefore on July 1, 1994 or six months before the basis for federal or

77 Massachusetts Housing Finance Agency rent preemption lapsed, whichever is later, adjusted to insure  
78 such rent provides a fair net operating income as of the date of the loss of preemption.

79           Section 4. (a) In a municipality accepting the provisions of this chapter, no person shall  
80 bring an action to recover possession of a governmentally involved or formerly governmentally  
81 involved housing unit to the extent that such regulation is not otherwise preempted by federal law or  
82 section 6 of chapter 708 of the acts of 1966, unless:(1) the tenant has failed to pay the rent to which the  
83 owner is entitled;(2) the tenant has violated an obligation or covenant of tenancy not inconsistent with  
84 chapter 93A or this chapter other than the obligation to surrender possession upon proper notice, and  
85 has failed to cure the violation after having received written notice thereof; (3) the tenant is causing,  
86 committing or permitting, a nuisance in, or substantial damage to, the housing unit, or is creating  
87 substantial interference with the comfort, safety, or enjoyment of the owner or other occupants of the  
88 same or any adjacent unit; (4) the tenant has used or permitted use of a housing unit for illegal  
89 purposes; (5) the tenant, who had a written lease or rental agreement which has terminated, has  
90 refused, after written requests or demand by the owner, to execute a written extension or renewal  
91 thereof for a further term of like duration on terms not inconsistent with or violative of any provision  
92 of this act; (6) the tenant has refused the owner reasonable access to the housing unit for the purpose of  
93 making necessary repairs or improvements required by law, or for the purpose of inspection as  
94 permitted or required by the lease or by law, or for the purpose of showing the housing unit to any  
95 prospective purchaser or mortgagee; (7) the tenant holding at the end of a lease term is a subtenant not  
96 approved by the owner; (8) for tenant-based rental assistance programs only, the owner seeks to  
97 recover possession in good faith of a unit for the owner's own use and occupancy or for use and  
98 occupancy by the owner's spouse, children, grandchildren, great grandchildren, parents, grandparents,  
99 brother, sister, father-in-law, mother in-law, son-in-law, or daughter-in-law; or (9) the owner seeks to

100 recover possession for any other just cause not in conflict with the provisions and purposes of this  
101 chapter or chapter 93A.

102 (B) The provisions of this section shall be construed as additional restrictions on the right to  
103 recover possession of such housing units.

104 Section 5. In a municipality accepting the provisions of this chapter, no person shall remove  
105 any governmentally involved or formerly governmentally involved housing unit from low-income  
106 rental housing use, without first obtaining permission for that purpose from the municipality or its  
107 designee, to the extent that such provision is not preempted by federal law or section 6 of chapter 708  
108 of the acts of 1966. Such permission may be subject to terms and conditions not inconsistent with the  
109 purposes and provisions of this chapter, including, without limitation, (a) incentives to continue in  
110 effect the low-income use restrictions previously in place for the property and (b) where sale, lease, or  
111 disposition of the property may result in the loss of all or a portion of the property for low-income  
112 rental housing use, the right of an incorporated tenant association in such housing, the municipality,  
113 the local housing authority, or non-profit community development corporations to negotiate for,  
114 acquire and operate such property on substantially equivalent terms and conditions as offered or  
115 available to a bona-fide third-party purchaser.

116 Section 6. To the extent not preempted by federal law or section 6 of chapter 708 of the acts of  
117 1966, a municipality accepting the provisions of this chapter shall require an owner of governmentally  
118 involved housing or formerly governmentally involved housing to affirmatively seek out and accept  
119 any prospective government housing resources, whether tenant-based or project-based, which  
120 maximize affordability of the housing units consistent with the income character of the property and  
121 the owner's right to obtain a fair net operating income for the housing units. The appropriate state and  
122 municipal agencies shall assist owners by identifying government housing resources.

123           Section 7. To the extent not preempted by federal law or section 6 of chapter 708 of the acts  
124 of 1966, and, so long as such regulation is consistent with the owner's right to obtain a fair net  
125 operating income and the municipality's housing policy, a municipality accepting the provisions of this  
126 chapter shall establish local preferences, priorities, and income limits for admission to governmentally-  
127 involved housing or formerly governmentally involved housing upon unit turnover, consistent, to the  
128 extent practicable, with the income profile of the property twelve months prior to the date of the loss  
129 of rent preemption or the decision to not renew an expiring subsidy contract. No ordinance, by-law, or  
130 regulation shall require an owner to create a tenancy involving any person with a history of conduct  
131 which would, if repeated, be grounds for eviction from such housing.

132           Section 8. A municipality accepting the provisions of this chapter may adopt such ordinances  
133 or by-laws and promulgate such rules, regulations, and orders as it may deem necessary or appropriate  
134 to effectuate the purposes hereof and may grant exemptions and exceptions thereto when such action  
135 would tend to maintain or increase the supply of affordable housing in the municipality, including,  
136 without limitation, to promote the sale of the property to a bona-fide tenant organization or non-profit  
137 community development corporation under terms and conditions which would tend to maintain the  
138 income character of the property.

139           Section 9. Any hearings regarding matters related to regulation of rents or removal permits for  
140 governmentally involved housing or formerly governmentally involved housing or regarding  
141 compliance with other provisions of this chapter, or any ordinance, by-law, rule, or regulation adopted  
142 hereunder, shall be conducted by the municipality or its designee in accordance with the provisions of  
143 section 11 of chapter 30A.

144           Section 10. All decisions of the municipality or its designee may be appealed to the housing  
145 court if available, the district court or the superior court in the jurisdiction or county where the  
146 municipality is located by any person aggrieved thereby, whether or not previously a party in the  
147 matter, within 30 calendar days after receipt of notice of such decision. Judicial review of adjudicatory  
148 decisions shall be conducted in accordance with section 14 of chapter 30A. Judicial review of  
149 regulations shall be conducted in accordance with section 7 of chapter 30A. The housing, district and  
150 superior courts shall have jurisdiction to enforce the provisions of this chapter and any ordinance, by-  
151 law, rule, or regulation adopted under this chapter and on application of the municipality or its  
152 designee or any aggrieved person may restrain or enjoin violations of any such ordinance, by-law, rule  
153 or regulation. In the interests of justice, the court may allow any necessary parties to be joined in or to  
154 intervene in any action brought hereunder and may in its discretion allow or require an action to  
155 proceed as a class action.

156           Section 11. It shall be unlawful for any person to do or omit to do any action in violation of  
157 this chapter or any order, ordinance, by-law, rule or regulation adopted or promulgated under this  
158 chapter. Whoever willfully violates any provision of this chapter or any order, ordinance, by-law, rule  
159 or regulation adopted or promulgated under this chapter or whoever makes a false statement in any  
160 testimony before the municipality or its designee, or whoever knowingly supplies the municipality or  
161 its designee with false information, in connection with a proceeding under this chapter, shall be  
162 punished by a fine of not more than \$400 or by imprisonment for not more than 90 days, or both. In  
163 the case of a second or subsequent offense, or where the violation continues after notice thereof, such  
164 person shall be punished by a fine of not more than \$2,000, or imprisonment for not more than one  
165 year, or both.

166           Section 12. This chapter shall be submitted to the voters of a city or town, by a vote of the city  
167 council, town council or board of selectmen, in the form of the following question which shall be  
168 placed upon the official ballot at a regular or special state or municipal election: "Shall chapter 40Q of  
169 the General Laws, entitled 'an act authorizing municipalities to protect low and moderate income  
170 tenants and units of governmentally involved housing', be accepted?" If a majority of the votes in  
171 answer to said question is in the affirmative, this chapter shall take full effect in such city or town, but  
172 not otherwise.

173           Section 13. The commonwealth shall not be liable for any claims or other legal action arising from the  
174 acceptance of or implementation of this act by any municipality.

175           Section 14. The provisions of M.G.L. Ch 40P shall not apply to any referendum or ordinance adopted  
176 under this enabling authority.

177           Section 15. The provisions of this act are severable, and if any of its provisions shall be held  
178 unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court  
179 shall not affect or impair any of the remaining provisions.